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 United States of America

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Criminal Case No. 08MJ1942
	)	
Plaintiff,	)	Hon. Irma E. Gonzalez
	)	
v.	)	
	)	
ESMERALDA GALLEGOS,	)	MOTION TO REVOKE
	)	MAGISTRATE JUDGE
	)	PORTER'S PRE-TRIAL
Defendant.	)	RELEASE ORDER AND TO DETAIN
	)	DEFENDANT PENDING TRIAL
	)	

COMES NOW the plaintiff, United States of America, by and through its counsel, Karen P. Hewitt, United States Attorney, and Harold W. Chun, Assistant United States Attorney, and pursuant to Title 18 U.S.C. Section 3145 (a)(1), hereby requests this Court to revoke the pre-trial release order issued by United States Magistrate Judge Louisa S. Porter in this matter. Said request is supported by the attached statement of facts and memorandum of points and authorities.

///

STATEMENT OF THE CASE

2 Defendant ESMERALDA GALLEGOS ("Defendant") is charged in a  
3 one-count complaint with, unlawful importation of a controlled  
4 substance, in violation of Title 21, United States Code, Section  
5 952 & 960.

6 On June 23, 2008, Defendant was arrested at the San Ysidro  
7 Port of Entry, California, when inspection of her vehicle revealed  
8 20.85 kilograms (45.97 pounds) of methamphetamine concealed in a  
9 non-factory compartment.

10 On June 24, 2008, Defendant made her initial appearance, in  
11 accordance with Federal Rules of Criminal Procedure 5, in the  
12 Southern District of California before Magistrate Judge Louisa S.  
13 Porter. At this hearing, the United States moved for Defendant's  
14 detention as a risk of flight.

## II

STATEMENT OF FACTS

17 At the detention hearing on June 27, 2008, the United States  
18 began by acknowledging that there was a presumption of detention  
19 based on the maximum penalty of life imprisonment that Defendant  
20 faces. In support of detention, the Government argued that due to  
21 the large quantity of drugs involved, the seriousness of the  
22 charges, Defendant's past history of failure to appears, and the  
23 substantial term of incarceration Defendant faces, that Defendant  
24 was a risk of flight. Additionally, the Government requested that  
25 if the Court chose not to detain the Defendant, then that bail be  
26 set with a one-million dollar bond secured by real property.  
27  
28

2 In her defense, Defendant argued that due to her ties to the  
3 community and lack of criminal history, detention was unnecessary  
4 and that conditions of bail could be set to ensure her future  
5 appearance. In regards to conditions of bail, Defendant requested  
6 that bail be set with a one-hundred-thousand dollar bond secured  
7 by real property.

8 The magistrate judge denied the United States' motion to  
9 detain based on flight risk and found that the Defendant had  
10 overcome her presumption of detention. In coming to this  
11 conclusion, the magistrate judge acknowledged that Defendant was  
12 a United States Citizen, that Defendant had four children who  
13 resided in California, that her parents lived in California, and  
14 that Defendant has lived her entire life within California. The  
15 magistrate judge set bail with a one-hundred-thousand dollar bond  
16 secured by real property. The United States then requested a stay  
17 of the bond and conditions of release pending review by this  
18 Court. The magistrate judge granted a stay of forty-eight hours.

19 III

20 POINTS AND AUTHORITIES

21 A. Defendant Should Be Detained Pending Trial as a Flight  
22 Risk

23 A magistrate judge's bail rulings are subject to *de novo*  
24 review in the district court. *United States v. Koenig*, 912 F.2d  
25 1190, 1192-3 (9<sup>th</sup> Cir. 1990). The district court has original  
26 jurisdiction over the felonies charged, and is therefore not  
27 exercising appellate jurisdiction over the magistrate judge's  
28 decision. *Id.* The Government must prove by a preponderance of

2 the evidence that Defendant is a flight risk and no conditions of  
3 release reasonably will assure the Defendant's appearance. See  
4 *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985).  
5 On the Government's appeal, this Court may revoke the release  
6 order or amend the conditions of release. 18 U.S.C. Section  
7 3145(a)(1).

8 Defendant faces a ten-year mandatory minimum sentence and a  
9 maximum sentence of life imprisonment. 21 U.S.C. § 960. Pursuant  
10 to 18 U.S.C. § 3142(e), Defendant faces a statutory presumption  
11 that no condition or combination of conditions will reasonably  
12 assure the appearance of the person as required. The statutory  
13 presumption imposes a burden of production on Defendant, but the  
14 burden of persuasion remains with the Government. See *United*  
15 *States v. Mercedes*, 254 F. 3d 433, 435-36 (2d Cir 2001). If  
16 Defendant produces rebuttal evidence, the presumption then remains  
17 a factor to be considered in the detention analysis. *Id.* See  
18 *also United States v. Ward*, 63 Supp.2d 1203, 1209 (C.D.Cal. 1999).

19 In determining Defendant's flight risk, this Court should  
20 consider the nature and circumstances of the offense, the weight  
21 of the evidence, and the person's character, which includes her  
22 physical and mental condition, family ties, employment, financial  
23 resources, length of residence in the community, community ties,  
24 past conduct, drug or alcohol abuse, criminal history, and  
25 appearance at prior court proceedings. 18 U.S.C. § 3142(g)(1)-  
26 (3).

27 Here, Defendant is a 34 year-old United States citizen,  
28 charged with violating 21 U.S.C. § 952 and 960, for importing a

2 controlled substance into the United States. On June 23, 2008,  
3 Defendant was arrested at the San Ysidro Port of Entry,  
4 California, when inspection of her vehicle, for which she was the  
5 sole occupant, revealed 20.85 kilograms (45.97 pounds) of  
6 methamphetamine hidden in a non-factory compartment. Since 21  
7 U.S.C. § 960 prescribes a ten-year mandatory minimum and a maximum  
8 sentence of life in prison for importation of 50 grams or more of  
9 methamphetamine, or 500 grams or more of a mixture containing  
10 detectable amounts of methamphetamine, Defendant faces a statutory  
11 presumption of detention based on 18 U.S.C. § 3142(e).

12 To rebut the statutory presumption, Defendant would contend  
13 that her ties to the community and lack of criminal history  
14 overcome the presumption of detention. Defendant is a native to  
15 California, and she currently resides in California. Further,  
16 Defendant's four children, parents, and sister also reside in  
17 California. In regards to Defendant's criminal history, a current  
18 criminal history check shows that Defendant has prior arrests and  
19 misdemeanor convictions, however, Defendant has no felony  
20 convictions.

21 Despite Defendant's lack of felony convictions and ties to  
22 the local community, the United States is concerned Defendant is  
23 a risk of flight.

24 First, Defendant faces a lengthy term of imprisonment.  
25 Although Defendant may be eligible for the benefits of safety  
26 valve, United States Sentencing Guidelines § 5C1.2(a), the  
27 Government currently estimates that the most favorable  
28 circumstances to Defendant still result in a Guidelines range of

2 70 - 87 months.<sup>1/</sup> While this range is below the ten-year mandatory  
3 minimum, it is undoubtedly a substantial term of imprisonment that  
4 increases the likelihood of flight.

5 Additionally, the gravity of Defendant's crime should not be  
6 overlooked or underestimated. Defendant imported 20.85 kilograms  
7 (45.97 pounds) of methamphetamine. A mandatory minimum sentence  
8 of 10 years, with a maximum sentence of life imprisonment, begins  
9 with 50 grams of methamphetamine, or 500 grams of a mixture  
10 containing methamphetamine. 21 U.S.C. § 960. In a light most  
11 favorable to Defendant, Defendant imported approximately forty-  
12 times the threshold quantity for life imprisonment. To compare,  
13 forty-times the threshold quantity for cocaine would be 200  
14 kilograms of cocaine, and forty-times the threshold quantity for  
15 marijuana would be 40,000 kilograms of marijuana. Further, the  
16 United States estimates that the wholesale value of 20.85  
17 kilograms of methamphetamine is approximately \$450,000 to \$919,000  
18 dollars, and the street value is estimated at approximately two-  
19 million dollars.<sup>2/</sup>

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22 <sup>1/</sup>Based on the current known weight of methamphetamine,  
23 Defendant's base offense level would be 38. U.S.S.G § 2D1.1.  
24 With level deductions for Safety Valve (-2), Minor Role (-4),  
25 Acceptance of Responsibility (-3) and Fast Track (-2),  
26 Defendant's adjusted offense level is 27. An offense level of  
27 27, criminal history category I, provides a Guidelines range of  
28 70-87 months.

27 <sup>2/</sup>Drug Prices were calculated on San Diego Law Enforcement  
28 Coordination Center's 2008 Street Drug Price List. Price list  
states a value of \$10 for 1/10 gram of methamphetamine, and  
\$10,000 - \$20,000 for 1 pound of methamphetamine.

2 Furthermore, despite Defendant's ties to the community, it is  
3 important to note that Defendant and her children are capable of  
4 living outside the United States. While Defendant is currently  
5 separated from her husband, the Defendant was previously married  
6 for twelve years. Defendant's husband currently lives in Mexico.  
7 Defendant's children remain in contact with their father.  
8 Currently, Defendant's eleven year-old child is spending the  
9 summer in Mexico with her father. The United States is concerned  
10 that Defendant's ties to Mexico, and her children's ability to  
11 live in Mexico, make Defendant a flight risk.

12 Moreover, Defendant has a troubling past of failure to  
13 appears on misdemeanor convictions. In April 2007, and May 2007,  
14 Defendant was convicted twice of failing to appear on pending  
15 traffic violations. The United States is concerned that  
16 Defendant's failure to appears on lesser offenses could be a  
17 foreshadowing of future non-appearances on the current charges.

18 Lastly, while Defendant has no felony convictions, she does  
19 however have arrest records for crimes that were not prosecuted.  
20 On February 19, 1997, Defendant was arrested for smuggling illegal  
21 aliens into the United States at the San Ysidro Port of Entry. On  
22 January 7, 2005, Defendant was arrested for smuggling illegal  
23 aliens into the United States at the Otay Mesa Port of Entry.  
24 Although the United States refused to prosecute these occurrences,  
25 these arrests, in combination with the current charges and the  
26 past convictions for failure to appear, indicate that Defendant is  
27 willing, and has a history of, violating both court orders and the  
28 laws of the United States.

IV.


CONCLUSION

Defendant GALLEGOS poses a serious flight risk. The United States respectfully requests this Court to revoke the existing release order and detain her pending trial. If this Court finds that detention is unwarranted and conditions of release can be designed to assure Defendant's attendance in future proceedings, the United States respectfully requests that Defendant's bail be set with an increased bond of one-million dollars secured by real property.

DATED: July 1, 2008.

Respectfully submitted,

KAREN P. HEWITT  
United States Attorney

  
HAROLD W. CHUN  
Assistant U.S. Attorney



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ESMERALDA GALLEGOS,

Defendant.

Criminal Case No. 08-MJ-1942

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, Harold W. Chun, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of the foregoing MOTION TO REVOKE RELEASE ORDER on the following parties by facsimile:

1. Todd Hilts  
2214 2<sup>nd</sup> Avenue  
San Diego, CA 92101  
Fax: 619-531-7904  
Attorney for Defendant

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on July 1, 2008.

  
HAROLD W. CHUN